



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**REGION 8
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Ref: 8ENF

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Richard O. Curley, Jr.
Counsel for Atlantic Richfield Company
Holland & Hart, L.L.P.
P.O. Box 8749
Denver, CO 80201-8749

Re: Tooele Valley Railroad Grade Site; Unilateral Administrative Order for Sampling

Dear Mr. Curley,

As we recently discussed, the US Environmental Protection Agency, Region 8 (EPA), is issuing to the Atlantic Richfield Company an Administrative Order for Removal Response Activities (Order)(enclosed), effective five (5) days from the date of signing by EPA. The Order requires Atlantic Richfield to conduct sampling investigations to assess contamination and submit a final report on an appropriate response, if any, at the Tooele Valley Railroad Grade Site, in and near Tooele, Utah.

Negotiations for a Order on Consent did not achieve an agreement for these activities. Nevertheless, EPA recognizes Atlantic Richfield's cooperation and sampling efforts in the past at this Site and the investigation required under the Order is virtually the same as that envisioned during the prior negotiations. After completion of the activities under this Order, EPA will evaluate the need for further work at the Site. As you know, Tooele County Housing Authority, owner of several residential properties at the Site, has previously signed the access agreement presented by Atlantic Richfield's contractor, Anderson Engineering. If you have any questions regarding this matter, please call me at (303) 312-6912.

Sincerely,

SIGNED
James Stearns
Staff Attorney

Enclosure

cc: Shun-Ping Chau, 8EPR-ER
Sheila D'Cruz, BP America Inc.
Pamela Kaye, ARCO Environmental Remediation, LLC
Robert O'Brien, Utah DEQ



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**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VIII**

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IN THE MATTER OF:)	UNILATERAL ADMINISTRATIVE
)	ORDER FOR REMOVAL RESPONSE
Tooele Valley Railroad Grade Site)	ACTIVITIES
Tooele County, Utah)	
SSID #08-DU)	U.S. EPA Region VIII
)	Docket No. CERCLA-08-2002-0002
)	
Atlantic Richfield Company)	Proceeding Under Section 106(a) of the
)	Comprehensive Environmental
Respondent.)	Response, Compensation, and Liability
)	Act, as amended, 42 U.S.C. § 9606(a)
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APPENDICES: 1 - Site Map
 2 - Sampling Plan, including HASP and QAPP
 3 - Sample results

I. JURISDICTION AND GENERAL PROVISIONS

1. This Order is issued pursuant to the authority vested in the President of the United States by section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended (“CERCLA”), and delegated to the Administrator of the United States Environmental Protection Agency (“EPA”) by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B and to the undersigned EPA officials.

2. This Order pertains to property located at the Tooele Valley Railroad Grade Site (“Site”), generally located along the former railroad right-of-way running approximately four (4) miles from the City of Tooele, Utah, east to the International Smelting & Refining National Priority List Superfund Site, in Tooele County, Utah, and depicted generally on the map attached as Appendix 1 to this Order. This Order requires the Respondent to conduct the Removal Actions described herein to abate an imminent and substantial endangerment to the public health or welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

3. EPA has notified the State of Utah of this action pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

4. This Order applies to and is binding upon Respondent and Respondent's heirs, directors, officers, employees, agents, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order.

5. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

III. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall be the effective date of this Order as provided in Section XVIII.

“EPA” shall mean the United States Environmental Protection Agency and any successor

departments or agencies of the United States.

“Interest” shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the United States Code, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time of accrual.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Order” shall mean this Unilateral Administrative Order and all appendices attached hereto, which are hereby incorporated by reference. In the event of conflict between this Order and any appendix, this Order shall control.

“Paragraph” shall mean a portion of this Order identified by an arabic numeral.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.*, (also known as the Resource Conservation and Recovery Act).

“Removal Actions” shall mean those activities to be undertaken by Respondents in accordance with the Sampling Plan and this Order.

“Sampling Plan” shall mean the plan submitted by Respondent and accepted by EPA with modifications, as set forth in Appendix 2 to this Order, and any modifications made in accordance with this Order.

“Section” shall mean a portion of this Order identified by a roman numeral.

“Site” shall mean the Tooele Valley Railroad Grade Site, generally located along a former railroad right-of-way running approximately four (4) miles from the City of Tooele, Utah, east to the International Smelting & Refining National Priority List Superfund Site, in Tooele County, Utah, and depicted generally on the map attached as Appendix 1 to this Order. The Site also encompasses any areas that hazardous substances and/or pollutants and contaminants from Site activities are found to have been placed on or to have migrated.

“Waste Material” shall mean (1) any “hazardous substance” under section 101(14) of CERCLA, 42 U.S.C. § 9601(14); and (2) any pollutant or contaminant under section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

“Work” shall mean all activities Respondent is required to perform under this Order.

IV. FINDINGS OF FACT

Site Description and History

7. a. The Tooele Valley Railroad Grade site (Site) is generally located along a former railroad right-of-way from the City of Tooele, Utah (Tooele), east to the International Smelting & Refining

National Priority List Superfund Site, in Tooele County, Utah. It starts at First (1st) Street, in Tooele, and extends east crossing 2nd, Broadway Avenue, 4th, 5th, 6th and 7th Streets, which are residential, and then continues east along the right-of-way adjacent to the Oquirrh Hills School playground, through a small plot of land owned by the Church of Jesus Christ of Latter-day Saints, past a public golf course and then east and northeast through other more rural areas.

b. In 1910, International Smelting & Refining Company (IS&R) began operating a copper smelter (also referred to as the “Tooele Smelter”) on the western slope of the Oquirrh Mountains approximately three miles east of Tooele, Utah. In 1914, Anaconda Copper Mining Company, later known as The Anaconda Company (Anaconda), acquired all of the stock of IS&R, which was then dissolved. A new corporation, International Smelting Company (ISC), was formed and Anaconda, the major shareholder of ISC, transferred the assets of the Tooele Smelter facility to ISC. In 1934, ISC changed its name to International Smelting & Refining Company, the same name as the company that first operated the facility. The newly formed IS&R owned and operated the Tooele Smelter until 1973 when IS&R was merged into Anaconda. The Respondent, Atlantic Richfield Company, acquired Anaconda in 1977 and merged Anaconda into Atlantic Richfield in 1981.

c. For more than sixty years, from 1910 until 1972, the Tooele Smelter was used for processing lead, copper and zinc ores. Copper smelting began in 1910 under the ownership of IS&R, with 4,000 tons of copper ore per day being processed. In 1912, IS&R built a lead smelter. Over the years, a lead-zinc sulfide flotation mill and a slag treatment plant for lead and zinc recovery were added. Copper production ceased in 1946, when the copper smelter closed. Lead smelting was discontinued in 1972. The Tooele Smelter was demolished in 1972.

d. In December 1908, a railroad route was surveyed to connect the San Pedro, Los Angeles, and Salt Lake Railroad main line to the site of the Tooele Smelter. Construction began in 1909. The Tooele Valley Railroad, as the new line was named, ran from Warner, Utah, three miles west of Tooele, to the Tooele Smelter, four miles east of town. The Railroad connection allowed ore to be shipped to the smelter from mines anywhere in the West. It also allowed the shipment from the smelter to other processing facilities of thousands of tons of lead bullion, blister copper, and numerous by-products, including silver.

e. The Tooele Valley Railroad was a wholly-owned subsidiary of IS&R, incorporated in 1909. It was operated and served the smelter for more than 60 years. The corporate ownership history is the same as that described for the Tooele Smelter in Paragraphs b. and c. above, including that ISC and subsequently IS&R (the company formed in 1934) owned and operated the Tooele Valley Railroad until 1973 when IS&R was merged into Anaconda, followed by Atlantic Richfield acquiring Anaconda in 1977 and merging Anaconda into Atlantic Richfield in 1981. After the closing of the smelter in 1972, business for the Railroad was sparse, and it was finally dismantled in 1983.

Release or Threatened Release

8. a. Operation of the Tooele Valley Railroad, including transport of materials, resulted in the deposition of Waste Material containing heavy metals, including lead and arsenic, along the length of the railroad right-of-way, in levels that may threaten human health and the environment.

b. Portions of the Site have been sampled previously. In January 2000, the State of Utah

Department of Environmental Quality performed sampling at the property within the Site owned by the Tooele County Housing Authority (TCHA)(hereafter referred to as the “Residential Properties”). The State, Utah Department of Environmental Quality, requested that EPA continue the investigation and perform additional sampling. In April 2000, during the construction of 13 residences at the Residential Properties, EPA took 24 XRF screening samples and 5 soil samples from approximately one block west of the Railroad Museum to approximately 500 feet east of 7th Street, in Tooele. The highest level of lead detected by XRF screening was approximately 3762 ppm, and the highest level of lead detected by soil sampling was approximately 5460 ppm. In August 2000, in order to verify or confirm the prior sampling, EPA re-sampled five of the soil samples from the April 2000 investigation. One of these samples showed significantly lowered lead level -- 49 ppm instead of the initial value of 1080 ppm – however the results from the other four samples were 1100 ppm, 120 ppm, 1800 ppm and 54 ppm. These Sampling Results are attached hereto as Appendix 3.

c. In 2003, Atlantic Richfield, under EPA oversight, performed sampling at other portions of the Site, including areas immediately to the east of the Residential Properties. As described in the Sampling Results, attached hereto as part of Appendix 3, these samples showed elevated levels of lead of up to approximately 7000 parts per million (ppm). Arsenic was detected in levels over 300 ppm. Other metals including copper, chromium, mercury and zinc were also found in elevated concentrations.

d. EPA has concluded that it is necessary to re-sample the Residential Properties for the following reasons: a) EPA has reviewed the 2000 sampling data and believes that, in light of the more recent, comprehensive sampling data immediately to the east of the TCHA properties, described above, the 2000 sampling conducted at the Residential Properties is not sufficient to accurately or completely determine the nature and extent of contamination in that area; b) According to the TCHA, fill was brought in during construction of the residences; however, the amount and source of such fill, where and how thickly it was applied, or its ability to provide an effective barrier preventing contact with residents can not be confirmed; and c) with the additional sampling, EPA will be able to provide a definite response to inquiries received from local residents as to the “cleanliness” of the soil.

e. On or about July 11, 2003, EPA wrote to the TCHA requesting access to take additional samples on the Residential Properties. EPA also contacted representatives of the TCHA by telephone on several occasions to discuss this request. TCHA responded that it would consent to access only if EPA issued an order requiring it to do so. EPA has issued a unilateral administrative order for access to TCHA. TCHA has since signed an access agreement allowing Respondent to sample the Residential Properties.

f. EPA has incurred response costs in both its sampling and oversight activities at and in connection with the Site.

Endangerment

9. The above-listed hazardous substances and pollutants and contaminants are contained in the soil in concentrations and quantities that may pose an imminent and substantial endangerment to the public health and the environment. Outlined below are the specific endangerment criteria for the major contaminants of concern found on the Site:

10. Young children and adults may experience adverse health effects when exposed to elevated concentrations of lead and arsenic and other metals in the soil. The primary route of exposure is via incidental ingestion of the contaminated soil. This may be from direct contact with outdoor soil, direct contact with indoor dust which is contaminated from outdoor soil and/or ingestion of food contaminated with indoor dust. Other routes of exposure include inhalation of wind-blown particulates and dermal contact with the soil. A portion of the site is now residential housing, a portion is adjacent to a school and golf course, and other more rural portions generally are characterized by an absence of physical barriers preventing access by the public.

11. Outlined below are the specific endangerment criteria for the major contaminants of concern found on the Site:

Arsenic – Excess exposure to arsenic is known to cause a variety of adverse health effects in humans. These effects depend on exposure level and duration. Arsenic is a known human carcinogen. Inhalation exposure is associated with increased risk of lung, gastrointestinal, renal or bladder cancer. Oral exposure to arsenic is associated with skin, liver, and bladder cancer. At very high doses, oral exposure to arsenic elicits nausea and vomiting. Lower doses over a chronic time period may elicit skin abnormalities, such as hyperkeratosis; kidney, and liver toxicity.

Lead – At high doses lead exposure is associated with adverse effects on reproduction and development, as well as inhibition of heme synthesis. At lower doses, impairment of the nervous system in young children is considered to be of greatest concern. Younger children are more susceptible to lead exposure because they absorb lead from their gastrointestinal tracts at a greater rate than adults do, their neurological systems are still rapidly developing, and they have more direct contact with soil and indoor dust than adults do. These neurological effects manifest as decreased I.Q., shortened attention span, and decreased hand and eye coordination. EPA classifies lead as a B2 carcinogen. Studies in animals show an increased incidence of kidney tumors in association with very high levels of lead exposure.

Copper – Copper is an essential element necessary for maintaining good health, but high doses can be harmful. Oral ingestion of high amounts of copper may cause vomiting, diarrhea, stomach cramps, and nausea. Chronic ingestion of high amounts of copper can cause liver and kidney damage.

Chromium – The hexavalent form of Chromium is a known human carcinogen by the inhalation route of exposure. Epidemiological studies have shown an association between inhalation exposure to chromium and lung cancer, as well as irritation of the respiratory tract. Oral ingestion of large amounts of hexavalent chromium can cause stomach upsets and ulcers, convulsions, kidney and liver damage.

Mercury – Exposure to high levels of metallic, inorganic, or organic mercury can permanently damage the brain, kidneys, and developing fetus. Effects on brain functioning may result in irritability, shyness, tremors, changes in vision or hearing, and memory problems.

Zinc – Zinc is an essential element necessary for maintaining good health, but high doses can be harmful. Oral ingestion of large doses of zinc may cause stomach cramps, nausea, and vomiting. Continued ingestion of large doses may result in anemia, damage to the pancreas, and lower

levels of high density lipoprotein cholesterol.

Respondent

12. Respondent is Atlantic Richfield Company. Atlantic Richfield Company is a Delaware corporation registered in the State of Utah as a qualified, active corporation in good standing, organized in the State of Utah on April 30, 1985.

13. Respondent was the “owner” and/or “operator” of the facility at the time of disposal of hazardous substances and/or pollutants and contaminants at the facility, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2). Respondent also accepted hazardous substances and/or pollutants and contaminants for transport to the facility, within the meaning of section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

Response Actions

14. There have been prior CERCLA response actions at the Site, chiefly the sampling efforts described above.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

15. Based on the Findings of Fact set forth above and the Administrative Record supporting this Removal Action, EPA has determined that:

a. The Tooele Valley Railroad Grade Site is a “facility” as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The Waste Material found at the Site, as identified in the Findings of Fact above, include “hazardous substance(s)” as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and “pollutants and contaminants” as defined by section 101(33) of CERCLA, 42 U.S.C. § 9601(33). These include lead and arsenic.

c. Respondent is a “person” as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent is liable under section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for performance of response actions and for response costs incurred and to be incurred at the Site. Respondent was the “owner” and/or “operator” of the facility at the time of disposal of hazardous substances at the facility, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2). Respondent also accepted hazardous substances for transport to the facility, within the meaning of section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

e. The conditions described in the Findings of Fact above constitute an actual or threatened “release” of a hazardous substance from the facility as defined by section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The conditions present at the Site constitute an imminent and substantial endangerment to public health or welfare or the environment within the meaning of section 106(a) of CERCLA, 42 U.S.C. § 9606(a). These conditions include, but are not limited to: actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants; this factor is present at the Site due to the existence of metals, including lead and arsenic, in the soils at the Site and the proximity of residential areas, a school and golf course, and other areas to which people and animals have access; and the high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate, due to wind and tracking or other transport of soils by human activity.

g. The Removal Actions required by this Order are necessary to protect the public health or welfare or the environment and are not inconsistent with the NCP and CERCLA.

VI. ORDER

16. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this Site, EPA hereby orders that Respondent comply with the following provisions, including, but not limited to, all attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order, and perform the following actions:

Notice of Intent to Comply

17. Respondent shall notify EPA in writing within ten (10) days after the effective date of this Order of Respondent's irrevocable intent to comply with this Order. Failure of Respondent to provide such notification within this time period shall be a violation of this Order by Respondent.

Designation of Contractor, Project Coordinator, and On-Scene Coordinator

18. a. Respondent shall perform the Removal Actions or retain a contractor(s) to perform the Removal Actions. Respondent shall notify EPA of Respondent's qualifications or the name(s) and qualification(s) of such contractor(s) within ten (10) business days of the effective date of this Order. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Removal Actions under this Order at least fifteen (15) days prior to commencement of such Removal Actions. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by Respondent, or of Respondent's choice of itself to do the Removal Actions. If EPA disapproves of a selected contractor or Respondent, Respondent shall retain a different contractor or notify EPA that it will perform the Removal Actions itself within five (5) business days following EPA's disapproval and shall notify EPA of that contractor's name or Respondent's name and qualifications within five (5) business days of EPA's disapproval.

b. Within ten (10) days after the effective date of this Order, Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order. Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present onsite or readily available during Site Work. EPA retains the right to disapprove of any Project Coordinator named by Respondent. If EPA disapproves of a selected Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of

that person's name and qualifications within five (5) business days following EPA's disapproval.
Receipt by Respondent's

Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

19. EPA has designated Shun-Ping Chau of the Emergency Response Unit, Region 8, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to:

Shun-Ping Chau, OSC, 8 EPR-ER,
U.S. Environmental Protection Agency
999 18th Street, Suite 300
Denver, CO 80202. 80202-2466
Phone: (303) 312-6848
Fax: (303) 312-6071

Work to Be Performed

20. Respondent shall perform, at a minimum, all activities contained in the Sampling Plan, attached hereto as Appendix 2, for investigation of threatened or actual releases of metals at the Site, including but not limited to lead, arsenic, copper, chromium, mercury and zinc, and prepare and submit a final report on the sampling activities and results, including a removal assessment report providing an assessment of the need for removal action to address the contamination found. Sampling at residences at the Site shall proceed according to a "removal assessment" that focuses on gardens, children's play areas (to the extent they exist) and lawn areas; spacing of the sample grid will be sufficiently comprehensive to fully characterize the Site as to the nature and extent of the contamination. Samples shall be analyzed using an XRF following SOP 5-10 Composite Soil Sampling Using a Field Portable X-Ray Fluorescence Spectrometry. Laboratory confirmations shall be performed on at least 10% of the total XRF composite samples for lead and arsenic and target metals including copper, chromium, mercury and zinc. Analysis of these samples in the laboratory will provide both control for the field screening and a more precise record of target metals. Sampling protocol shall be under the direction of EPA. Respondent shall implement the Sampling Plan in accordance with the schedule provided therein. Respondent shall notify EPA at least 48 hours prior to performing any on-site Work pursuant to the Sampling Plan. Respondent shall not commence or undertake any Removal Actions at the Site without prior EPA approval and except in conformance with the terms of this Order.

21. Respondent shall perform, at a minimum, all actions necessary to implement the Sampling Plan. Respondent shall implement the Health and Safety Plan (HASP), attached hereto as part of Appendix 2 to this Order, to ensure the protection of the public health and safety during performance of Work under this Order. Respondent shall implement the Quality Assurance Project Plan (QAPP) during the pendency of these removal actions. Respondents shall incorporate all changes to the HASP recommended by EPA and shall implement the plan during the pendency of the Removal Actions.

- a. All sampling and analyses performed pursuant to this Order shall conform to EPA

direction, approval, and guidance regarding sampling, quality assurance/quality control (“QA/QC”), data validation, and chain of custody procedures. Respondent shall implement and conform to the Quality Assurance Project Plan (QAPP), attached hereto as part of Appendix 2, that ensures that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. As specified in the approved QAPP, Respondent shall follow, as appropriate, “Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures” (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondents shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, “Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs” (American National Standard, January 5, 1995), and “EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001),” or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (“NELAP”) as meeting the Quality System requirements.

b. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than five (5) days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary.

Final Report

22. a. Within thirty (30) days after completion of all Work required by this Order under the Sampling Plan, Respondent shall submit for EPA review and approval a final report (Final Report) summarizing the actions taken to comply with this Order. The Final Report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled “OSC Reports.”

b. The Final Report shall present the analytical results of all sampling and analyses performed; a detailed discussion of the quantities, types and locations of Waste Material detected at the Site; and a Removal Assessment report which shall include a preliminary assessment of the risk posed by such Waste Materials in light of appropriate risk levels protective of human health and the environment, a detailed discussion of various removal and disposal options appropriate for the levels of contamination detected at the Site, and a good faith estimate of total costs for the removal and disposal options presented. Respondent shall also identify ARARs in the Final Report for each removal and disposal option discussed, subject to EPA approval. The Final Report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

“Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Reporting

23. a. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every seventh (7th) day after commencing Work under this Order until the cessation of the Removal Actions required under this Order, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of Work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent and Successor in title shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice to EPA of the proposed conveyance, including the name and address of the transferee. The party conveying such an interest shall require that the transferee comply with Section VI, Paragraphs 24 and 25 of this Order (Access to Property and Information).

Access to Property and Information

24. Respondent shall provide and/or obtain access to the Site and off-site areas to which access is necessary to implement this Order and provide access to all records and documentation related to the conditions at the Site and the action conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State of Utah representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which EPA determines to be necessary. Respondent shall submit to EPA, upon receipt, the results of all sampling or tests and all other data generated by Respondent or its contractor(s), or on the Respondent's behalf during implementation of this Order.

25. Where action under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within thirty (30) days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if, after using its best efforts, it is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the Removal Actions described herein, using such means as EPA deems appropriate. EPA reserves the right to seek reimbursement from Respondent for all costs and attorney's fees incurred by the United States in obtaining access for Respondent.

Record Retention, Documentation, Availability of Information

26. Respondent shall preserve all documents and information relating to Work performed under this Order, or relating to the hazardous substances found on, or released from, the Site, for ten years following completion of the Removal Actions required by this Order. At the end of this ten-year period and thirty (30) days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection and, upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the ten-year period at the written request of EPA.

27. Respondent may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by the Respondent. EPA shall only disclose information covered by a business confidentiality claim to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondent.

28. Respondent shall maintain a running log of privileged documents on a document-by-document basis, containing the date, author(s), addressee(s), subject, the privilege or grounds claimed (e.g., attorney work product, attorney-client), and the factual basis for assertion of the privilege. Respondent shall keep the “privilege log” on file and available for inspection. EPA may at any time challenge claims of privilege through negotiations or otherwise as provided by law or the Federal Rules of Civil Procedure.

Off-Site Shipments

29. All hazardous substances or pollutants or contaminants removed offsite pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with 42 U.S.C. § 9621(d)(3) and the EPA “Revised Procedures for Implementing Off-Site Response Actions,” OSWER Directive Number 9834.11, November 13, 1987. Regional Offices will provide information on the acceptability of a facility under section 121(d)(3) of CERCLA and the above directive. Unless impracticable, prior notification of out-of-state waste shipments should be given to the OSC consistent with OSWER Directive 9330.2-07.

Compliance With Other Laws

30. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in section 121(e) of CERCLA and 40 C.F.R. § 300.415(i). In accordance with 40 C.F.R. § 300.415(i), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental, state environmental, or facility siting laws. (see “The Superfund Removal Procedures for Consideration of ARARs During Removal Actions,” OSWER Directive No. 9360.3-02, August 1991).

Emergency Response and Notification of Releases

31. If any incident, or change in Site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent

shall also immediately notify the OSC or, in the event of his or her unavailability, shall notify the National Response Center at (800) 424-8802 of the incident or Site conditions. If Respondent fails to take action, then EPA may respond to the release or endangerment and reserve the right to pursue cost recovery.

32. In addition, in the event of any release of a hazardous substance, Respondent shall immediately notify EPA's OSC at (303) 312-6848 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA section 103(c) and section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001, et seq.

VII. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

33. The OSC shall be responsible for overseeing the proper and complete implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, 40 C.F.R. § 300.120, including the authority to halt, conduct, or direct any action required by this Order, or to direct any other removal action undertaken by EPA or Respondents at the Site. Absence of the OSC from the Site shall not be cause for stoppage of Work unless specifically directed by the OSC.

34. EPA and Respondent shall have the right to change their designated OSC or Project Coordinator. EPA shall notify Respondent, and Respondent shall notify EPA five (5) days before such a change is made. Notification may initially be made orally, but shall be followed promptly by written notice.

VIII. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE

35. Violation of any provision of this Order may subject Respondent to civil penalties of up to twenty-seven thousand five hundred dollars (\$27,500) per violation per day, as provided in section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to section 106 of CERCLA, 42 U.S.C. § 9606.

IX. RESERVATION OF RIGHTS

36. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health or welfare or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances or pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or

any other applicable law. EPA reserves the right to bring an action against Respondent under section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any Response Costs incurred by the United States related to this Order or the Site and not reimbursed by Respondent.

X. OTHER CLAIMS

37. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by the Respondent or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

38. This Order does not constitute a pre-authorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

39. Nothing in this Order shall constitute a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under section 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

XI. MODIFICATIONS

40. Modifications to any plan or schedule or the attached Sampling Plan may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within seven (7) days; provided, however, that the effective date of the modification shall be the date of the OSC's oral direction. The rest of the Order, or any other portion of the Order may only be modified in writing by signature of the undersigned EPA program director.

41. If Respondent seeks permission to deviate from any approved plan or schedule or the Statement of Work, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis.

42. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve Respondent of its obligations to obtain such formal approval as may be required by this Order and to comply with all requirements of this Order unless it is formally modified. No failure or delay by EPA to acknowledge, or make a decision with regard to, any request by Respondent to deviate from any approved plan or schedule or from the requirements and procedures set forth in Appendix 2 to this Order shall relieve Respondent of its obligations to comply with all requirements of this Order unless it is formally modified in accordance with the procedures set forth herein.

XII. NOTICE OF COMPLETION

43. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, EPA will provide notice to Respondent. If EPA determines that any Removal

Actions have not been completed in accordance with this Order, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondents modify the Sampling Plan to correct such deficiencies. The Respondents shall implement the modified and approved Sampling Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Sampling Plan shall be a violation of this Order.

XIII. ACCESS TO ADMINISTRATIVE RECORD

44. The Administrative Record supporting these Removal Actions is available for review during normal business hours at the EPA Region 8 Superfund Records Center on the 5th floor, at 999 18th Street, in Denver, CO.

XIV. OPPORTUNITY TO CONFER

45. Within five (5) days after the effective date of this Order, Respondent may request a conference with EPA. Any such conference shall be held within seven (7) days after the effective date unless extended by agreement of EPA and Respondent. At any conference held pursuant to the request, Respondent may appear in person or be represented by an attorney or other representative.

46. If a conference is held, Respondent may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondent may submit any information, arguments or comments in writing to EPA within three (3) days following the conference, or within ten (10) days following issuance of the Order if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. Requests for a conference, or any written submittal under this Paragraph, shall be directed to James Stearns, Enforcement Attorney, U.S. EPA (8ENF-L), 999 18th Street, Suite 300, Denver, CO 80202-2466, telephone (303) 312-6912.

XV. INSURANCE

47. At least seven (7) days prior to commencing any on-site Work under this Order, Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of two million dollars, combined single limit. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XVI. ADDITIONAL REMOVAL ACTIONS

48. If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health or welfare or the environment, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that additional removal actions are necessary to protect public health or welfare or the environment,

Respondent shall submit for approval by EPA a Work Plan for the additional removal actions. The draft Work Plan shall provide a description of, and an expeditious schedule for, the action required by EPA as additional removal actions. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Respondent(s) shall submit a revised draft Work Plan within (20) days of receipt of EPA's notification of the required revisions. Respondent(s) shall implement the Work Plan as finally approved in writing by EPA in accordance with the provisions and schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondent(s) shall notify EPA at least 48 hours prior to performing any on-site work pursuant to the EPA approved Work Plan. Respondent(s) shall not commence or undertake any removal actions at the Site without prior EPA approval. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XI.

XVII. SEVERABILITY

49. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

XVIII. EFFECTIVE DATE

50. This Order shall be effective five (5) days after the Order is signed by EPA.

IT IS SO ORDERED:

By: **SIGNED** _____ Date: **11-20-03** _____
Douglas Skie, Director
Preparedness, Assessment, and Emergency Response Program
Office of Ecosystems Protection and Remediation
U.S. Environmental Protection Agency, Region 8

EFFECTIVE DATE: **11-25-03** _____

**In the Matter of: Atlantic Richfield Company; Tooele Valley Railroad Grade Site
Docket No. CERCLA-08-2004-0002**

The undersigned hereby certifies that the original and one copy of the attached UNILATERAL ADMINISTRATIVE ORDER FOR REMOVAL RESPONSE ACTIVITIES in the matter of ATLANTIC RICHFIELD COMPANY; TOOEELE VALLEY RAILROAD GRADE SITE was hand-carried and filed with the Regional Hearing Clerk, EPA Region 8, 999 18th Street, Denver, Colorado, 80202-2466, and assigned DOCKET No. CERCLA-08-2004-0002 on November 21, 2003.

A true and that a true copy of the aforementioned document was placed in the United States first class mail with the certified/return receipt #7002 2410 0001 9353 8513 to counsel for Atlantic Richfield Company; Tooele Valley Railroad Grade Site on November 21, 2003;

Richard O. Curley, Jr.
Counsel for Atlantic Richfield Company
Holland & Hart, L.L.P.
P.O. Box 8749
Denver, CO 80201-8749

SIGNED

November 21, 2003

Dayle De Arvil
Secretary/FOIA Coordinator
Office of Enforcement, Compliance and
Environmental Justice for EPA, Region 8

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE
REGIONAL HEARING CLERK.**

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON NOVEMBER 21, 2003.

